

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

PCHB Nos. 526 and 544

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

10 THESE MATTERS being consolidated notices of appeal to civil
11 penalties totaling \$150.00 for three alleged smoke emission violations;
12 having come on regularly for hearing before the Pollution Control
13 Hearings Board on the 21st day of June, 1974, at Seattle, Washington;
14 and appellant, American Bakeries Company, appearing through its
15 plant manager, J. M. Muro and respondent, Puget Sound Air Pollution
16 Control Agency, appearing through its attorney, Keith D. McGoffin; and
17 Board members present at the hearing being Walt Woodward, presiding
18 officer and W. A. Gissberg; and the Board having considered the sworn

1 testimony, exhibits, records and files herein and having entered on
2 the 25th day of June, 1974, its proposed Findings of Fact, Conclusions
3 of Law and Order, and the Board having served said proposed Findings,
4 Conclusions and Order upon all parties herein by certified mail,
5 return receipt requested and twenty days having elapsed from said
6 service; and

7 The Board having received no exceptions to said proposed Findings,
8 Conclusions and Order; and the Board being fully advised in the premises;
9 now therefore,

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
11 Findings of Fact, Conclusions of Law and Order dated the 25th day of
12 June, 1974, and incorporated by this reference herein and attached
13 hereto as Exhibit A, are adopted and hereby entered as the Board's
14 Final Findings of Fact, Conclusions of Law and Order herein.

15 DONE at Lacey, Washington, this 6th day of August, 1974.

16 POLLUTION CONTROL HEARINGS BOARD

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18 Walt Woodward
19 WALT WOODWARD, Chairman

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21 W. A. GISSBERG, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
AMERICAN BAKERIES COMPANY)
Appellant,)
vs.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB Nos. 526 and 544

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

These consolidated matters, being the appeals to civil penalties totaling \$150.00 for three alleged smoke emission violations, came before the Pollution Control Hearings Board (Walt Woodward, presiding officer, and W. A. Gissberg) in the Seattle facility of the Board of Industrial Insurance Appeals on June 21, 1974.

Appellant was represented by its plant manager, J. M. Muro; respondent appeared through Keith D. McGoffin. Sherri Darkow, Olympia court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted.

EXHIBIT A

1 From testimony heard and exhibits examined, the Pollution Control
2 Hearings Board makes these

3 FINDINGS OF FACT

4 I.

5 On January 3, 1968, January 13, 1969 and January 9, 1973,
6 respondent issued notices of violation, citing Section 9.03 of its
7 Regulation I, to appellant for smoke emissions from a stack or stacks
8 of its bakery at 2901 Sixth Avenue South, Seattle, King County, but did
9 not levy any civil penalties therewith.

10 II.

11 On January 9, 1973 and on November 30, 1973, inspectors on
12 respondent's staff called at appellant's bakery and explained the
13 waiver of smoke emission violation provisions for temporary equipment
14 breakdowns in Section 9.16 of respondent's Regulation I.

15 III.

16 On January 3, 1974, January 11, 1974 and February 28, 1974, smoke
17 was emitted from a stack or stacks of appellant's bakery at 2901 Sixth
18 Avenue South, Seattle, King County, for periods longer than three
19 consecutive minutes of a shade darker than No. 2 on the Ringelmann Scale.

20 IV.

21 The emissions in Finding of Fact III, noted by inspectors on
22 respondent's staff, resulted in respondent serving on appellant Notice
23 of Violation No. 9036 and Notice of Civil Penalty No. 1334 (for the
24 emission of January 3, 1974); Notice of Violation No. 9015 and Notice
25 of Civil Penalty No. 1359 (for the emission of January 11, 1974), and
26 Notice of Violation No. 9526 and Notice of Civil Penalty No. 1451 (for

1 the emission of February 28, 1974). In each case, the notice of
2 violation cited Section 9.03 of respondent's Regulation I and the
3 penalty was \$50.00.

4 V.

5 Appellant contends, but did not prove, that sometime late in
6 1973 it notified respondent that appellant was changing its boiler
7 burner equipment so that the boilers could be fired, alternately, by
8 either oil or natural gas, and that on January 9, 1974, appellant
9 notified respondent it would "be on oil" in a couple of days. The
10 violations cited in Finding of Fact IV occurred during a period when
11 appellant was installing new boiler firing equipment which had not been
12 finally adjusted.

13 VI.

14 Section 9.03 of respondent's Regulation I makes it unlawful to
15 cause or allow the emission for more than three minutes in any one hour
16 of an air contaminant darker in shade than No. 2 on the Ringelmann
17 Scale. Section 9.16 provides for waiver of violations if the owner of
18 equipment which is otherwise in violation temporarily due to mechanical
19 breakdown notifies respondent of the "time, date, duration and anticipated
20 influence on emissions" of the breakdown. Section 3.29 authorizes
21 respondent to levy a civil penalty of not more than \$250.00 for each
22 violation of Regulation I.

23 VII.

24 Any Conclusion of Law hereinafter stated which is deemed to be a
25 Finding of Fact is adopted herewith as same.

26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER

1 From these Findings, the Pollution Control Hearings Board comes to
2 these

3 CONCLUSIONS

4 I.

5 Appellant was in violation of Regulation I as cited in Notices of
6 Violation Nos. 9036, 9015 and 9526. If appellant contacted respondent
7 relative to the installation of new burner equipment, said calls were
8 not specific enough to meet the waiver requirements of Section 9.16 of
9 respondent's Regulation I.

10 II.

11 The penalties in Notices of Violation Nos. 1334, 1359 and 1451,
12 each being one-fifth of the maximum allowable amount, are reasonable,
13 particularly in view of the notices of violation issued in 1968, 1969
14 and 1973 for which no civil penalties were invoked.

15 III.

16 Any Finding of Fact herein which is deemed to be a Conclusion of
17 Law is adopted herewith as same.

18 Therefore, the Pollution Control Hearings Board issues this

19 ORDER

20 The appeals are denied and the three civil penalties totaling
21 \$150.00 are sustained.

22 DONE at Lacey, Washington this 25th day of June, 1974.

23 POLLUTION CONTROL HEARINGS BOARD

24 Walt Woodward
WALT WOODWARD, Chairman

25 W. A. Gissberg
W. A. GISSBERG, Member

26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER